

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRIAN WHITTON,

Petitioner,

v.

Case No. 21-C-844

UNITED STATES OF AMERICA,

Respondent.

ORDER GRANTING CERTIFICATE OF APPEALABILITY

On February 27, 2020, after a four-day jury trial, Brian Whitton was found guilty of arson of a commercial building, in violation of 18 U.S.C. § 844(i); two counts of mail fraud, in violation of 18 U.S.C. § 1341; use of fire to commit mail fraud, in violation of 18 U.S.C. § 844(h); and making a false statement, in violation of 18 U.S.C. § 1001. On July 6, 2020, Whitton was sentenced to 180 months imprisonment to be followed by 3 years of supervised release. Whitton thereafter filed a motion for relief from his conviction pursuant to 28 U.S.C. § 2255. In support of his motion Whitton alleged that his Sixth Amendment right to counsel was denied as a result of the ineffective assistance of his attorney. More specifically, Whitton claimed that his attorney coerced him into waiving his right to testify on his own behalf and refused to call his wife and his accountant as witnesses.

On April 12, 2022, the Court entered a decision denying Whitton's motion without a hearing. Having considered the arguments presented and the evidence in the case, the Court hereby grants a certificate of appealability on Whitton's claim that his trial attorney provided ineffective assistance of counsel. Although the Court is confident that its denial of Whitton's motion is

appropriate, Whitton has nevertheless made a substantial showing of the denial of a constitutional right within the meaning of § 2253(c)(2). In other words, reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner. *Slack v McDaniel*, 529 U.S. 473, 484 (2000).

SO ORDERED at Green Bay, Wisconsin this 11th day of May, 2022.

s/ William C. Griesbach

William C. Griesbach
United States District Judge